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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/982,052

10/16/2001

John H. Randby

S63.2-8920

8428

490

7590

02/07/2005

VIDAS, ARRETT & STEINKRAUS, P.A.

6109 BLUE CIRCLE DRIVE

SUITE 2000

MINNETONKA, MN 55343-9185

EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/982,052

Applicant(s)

RANDBY ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 4,5 and 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-11, 16, 17 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Nov. 16, 2004 has been entered.

Claims 4, 5 and 12-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the response filed Feb. 27, 2004.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jendersee et al. (5,836,965). Jendersee et al., in figure 7, discloses catheter 30 comprising an expandable distal portion 36, stent 10, first sleeve (the left most sleeve 54) having a first end (the left end) attached to the catheter (i.e. attached to the balloon 36 of the catheter) and having a second end (the right end) abutting the first end of the stent such that the first sleeve and stent do not overlap. Alternatively,

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it would have been obvious that member 54 is a "sleeve" since it is thin-walled and tubular.

Claims 7-11, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jendersee et al. (5,836,965). As to claim 7, Jendersee et al. fail to disclose the catheter having inner and outer shafts. However, it is old and well known in this art to so construct balloon catheters in order to provide an annular inflation lumen between the shafts and provide a small profile for the catheter. It would have been obvious to so construct the Jendersee et al. catheter so that it too would have this advantage. As to claims 8 and 9, Jendersee et al. fail to disclose the sleeves 54 being formed of polyurethane (claim 8) or an elastomer (claim 9). However, it is old and well known in this art to use polyurethane as a material in constructing balloon catheters since it is very durable and biocompatible. It would have been obvious to use polyurethane for the Jendersee et al. sleeve material so that it too would have this advantage. As to claims 10, 11, 16 and 17, Jendersee et al., in the figure 7 embodiment, fail to disclose the second end of the each sleeve 54 as having an annular region of increased thickness. However, Jendersee et al., in the figure 3 embodiment, teach that the retainer may be tapered (col. 7, lines 45) and in the figure 8 embodiment show the second end of

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the each sleeve 54 as having an annular region of increased thickness. This has the apparent advantage of providing more support to the ends of the stent due to the thicker material of the sleeve. It would have been obvious to provide the second end of the each sleeve 54 (in the figure 7 embodiment) with an annular region of increased thickness so that it too would have this advantage.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jendersee et al. (5,836,965) in view of Campbell (6,592,568). Jendersee et al. fail to disclose the center portion of the stent being expanded before the ends of the stent. However, Campbell teaches that the center portion of the stent should be expanded before the ends of the stent in order to obtain the advantage of reducing longitudinal displacement of the stent during expansion (col. 1, line 64 to col. 2, line 4). It would have been obvious to use the balloon design of Campbell for the Jendersee et al. balloon to make the Jendersee et al. center portion of the stent expand before its ends so that it too would have this advantage.

Applicant's arguments with respect to claims 1-3, 6-11, 16, 17 and 20 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht  
2/3/05



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731